

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

CNC, FF

### **Introduction**

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause, which states, "Tenant is repeatedly late paying rent". The tenant's application was also inclusive of recovery of the filing fee. The landlord attended the hearing and verbally requested an order of possession under s. 55 of the Residential Tenancy ACT (RTA). The landlord also verbally amended their request that in the event I uphold the notice to end for cause that their request for an Order of Possession was acceptable if effective March 31, 2009. Both the Landlord and the tenant attended the conference call hearing and each had an opportunity to fully participate in the hearing. Each confirmed that the issues before this hearing could not be mediated to the satisfaction of both parties.

### **Issue(s) to be Decided**

Should the One(1) Month Notice to End Tenancy for Cause, dated January 27, 2009, be Cancelled?

Is the landlord entitled to an order of possession?

Is the tenant entitled to recovery of the filing fee for the application?

### **Background and Evidence**

Rent in the amount of \$830 is payable in full and in advance on the first (1<sup>st</sup>.) day of each month. The tenant claims that until they received the Notice to End (NTE) for Cause they were not aware that their rent cheques, dated the 1<sup>st</sup>. of each month, were being received by the landlord, later than on the 1<sup>st</sup>. of each month. Along with the NTE the tenants received the receipts for the months of November and December 2008 and January 2009; which, by their date, the landlord claims is when their rent cheque was received by the landlord: subsequent to the payable due date of the 1<sup>st</sup>. They were not aware prior to the NTE was served that their rent was being received by the landlord, late.

The landlord's testimony in respect to the payments of rent and the receipts for these months is that the receipts are issued for the same date as the rent cheques are picked up from the rent DROP BOX, by the building maintenance man, in the tenant's building, as follows:

**Cheque for November 2008:** was picked up and received on the 4<sup>th</sup> of month, Receipt issued for the 4<sup>th</sup>.

**Cheque for December 2008:** was picked up and received on the 3<sup>rd</sup>. of month, Receipt issued for the 3<sup>rd</sup>.

**Cheque for January 2009:** was picked up and received on the 3<sup>rd</sup>. of month, Receipt issued for the 3<sup>rd</sup>.

The tenant testified that they always place their rent cheque, dated the first of the month, in the designated Drop Box in the building, by or before the 1<sup>st</sup>. of the month. Their testimony is that they are not aware of what happens next, and have no control of when the landlord actually receives the cheques. The tenants question the system which in place for submitting the rent as it hinges on factors, and an individual, for which they are not in control, and they claim that neither is the landlord.

The landlord was not able to provide as a witness the maintenance man responsible for picking up the cheques from the drop box and ensuring their delivery to the landlord, but expressed he does as he is asked by the landlord and there is no reason to believe he somehow withholds rent payments. The tenant does not express an equal amount of confidence of the system in place.

## **Analysis**

When this notice to end tenancy was served on the tenants the tenant was deemed by the landlord to be repeatedly late in paying rent and that the rent was deemed to have been late on three (3) consecutive occasions: the minimum number of times required for a landlord to justify issuing a Notice To End Tenancy for Cause.

On reflection of the testimony, and in the absence of any other evidence before me, I prefer the tenant's evidence that they did as they are required to do in their system of paying the rent in order for the landlord to receive their rent on the required date of the 1<sup>st</sup>. of the month. I find the landlord did not meet their burden of proof in providing compelling testimony or sufficient evidence for why the notice to end should be upheld.

I also find the tenant is entitled to recover the filing fee of their application.

## **Conclusion**

**I order** the One (1) Month Notice to End Tenancy for Cause dated January 27, 2009 is CANCELLED, and the tenancy, for now, continues.

**I further order** that the tenant may deduct the cost of the filing fee in the amount **\$50** from future rent.

Dated February 20, 2009